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OIL POLLUTION LIABILITY AND COMPENSATION ACT OF 1986

SEPTEMBER 23 (legislative day, SEPTEMBER 15), 1986.—Ordered to be printed

Mr. STAFFORD, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 2799]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 2799) to consolidate and improve Federal laws providing compensation and establishing liability for oilspills having considered the same, reports favorably thereon with amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT

The Committee on Environment and Public Works has long been concerned with the potential environmental dangers posed by the transportation, storage, and handling of oil. In 1970, extensive committee activity resulted in enactment of the Water Quality Improvement Act, which amended the Clean Water Act to establish liability for cleanup of spills of oil from facilities and vessels.

The oil pollution liability provision, section 311, was amended in 1977 to expand the geographic coverage of the law, raise the limits of liability for discharges of oil and hazardous substances, and add restoration of damaged natural resources as an element of removal costs.

In 1978, the committee approved a bill, S. 2083, the Oil Pollution Liability and Compensation Act of 1978, to establish a liability fund and to provide for compensation for damages and cleanup costs caused by discharges of oil and hazardous substances. That portion of the bill regarding hazardous substances was modified and led to enactment of the Comprehensive Environmental Re-

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sponse, Compensation, and Liability Act of 1980. The portion of the bill relating to oil pollution was not enacted.

What the Nation needs is a package of complementary international, national, and State laws that will adequately compensate victims of oil spills, provide quick, efficient cleanup, and internalize those costs within the oil industry and its transportation sector.

Instead, there is a fragmented collection of Federal and State laws providing inadequate cleanup and damage remedies, taxpayer subsidies to cover cleanup costs, third party damages that go uncompensated, and substantial barriers to victim recoveries—such as legal defenses, statutes of limitation, the corporate form, and burdens of proof that favor those responsible for the spill.

Oil pollution

The danger of oil pollution resulting from accidental and unauthorized operational spills from tankers and oil facilities is a matter of continuing concern for coastal and other States. Although offshore producers deserve great credit for their improved record in significantly deceasing the number and size of spills resulting from their operations, future exploration and production will be in deeper waters and harsher environments. This can only increase the chances that a major spill will again occur. Likewise, even though improved construction, accompanied with more stringent safety and operating standards have resulted in fewer spills, the problem of oil pollution still plagues us and the potential for a catastrophic spill remains.

Recent vessel spills highlight the problem. Last December, the United States tanker *Argo Anchorage* ran aground in Port Angeles Harbor, Washington, resulting in the discharge of almost 200,000 gallons of crude oil causing extensive damage to 7 million board feet of marketable lumber and killing a great amount of sea life.

In September 1985, the Panamania tanker, *Grand Eagle,* grounded in the Delaware River, damaging shorelines in Delaware, New Jersey, and Pennsylvania with the estimated 425,000 gallons of crude oil that was spilled. In October, 1984, the oil tanker *Puerto Rican* suffered explosions just off the California coast near San Francisco. It sank and released about 400,000 gallons of oil. And in June, 1984, the *M.V. Alvenus,* a British tanker, grounded and fractured just off the Texas-Lousiana coast releasing about 2 million gallons of oil. While potentially castastrophic, these large oil spills are but a few of the almost daily oil mishaps that require immediate action.

These types of spills will continue to occur. Earlier this month, the *Viking Osprey,* a Singapore flag ship discharged 300,000 gallons of crude oil into the Delaware River. Less likely, but also possible, is a catastrophic spill along our coast comparable to that which occurred when the *Amoco Cadiz* broke apart off the Brittany coast of France in 1978.

Existing Federal law

Under existing Federal law, at least five statutes deal with the issue of oil spill liability and compensation. Each is different, and each is inadequate.

The Clean Water Act, which has jurisdiction over most large tanker and inland barge incidents, has historically provided only partial protection. The Act sets inappropriately low limits of liability for owners and operators of vessels with respect to Federal oil spill removal costs and natural damages, and provides no coverage or compensation for other damages.

As documented in a report prepared by the U.S. General Accounting Office in 1983, gross inadequacies exist in the CWA's provisions dealing with spiller responsibility for cleanup costs. Between 1971 and 1982 the United States Government obligated $124 million from the Clean Water Act's section 311(k) revolving fund, but recovered only $49 million from spillers, for a total expenditure of $75 million in national funds. In individual cases the percentage of cleanup costs expended by the government which have been recovered in courts has been even lower. Funds also are expended in the costly, time consuming litigation required to recoup cleanup expenditures. According to the GAO report, as of 1982 there were 77 cases in litigation involving United States Government efforts to recover $36.5 million.

Another problem with the Clean Water Act is that its section 311(k) revolving fund is inadequate to cover large oil spills. This fund has never been funded at the authorized level of $35 million, leaving aside the fact that this amount is far too low. Moreover, since the fund is appropriated from the Treasury, it undercuts budget reduction goals and runs counter to cost internalization policies. These policies are exacerbated by the fact that courts have found the Clean Water Act to provide the only national remedy for recovering oil spill cleanup costs. These courts have held that the government cannot use common law maritime tort or nuisance theories to recover its excess cleanup costs.

In addition to the Clean Water Act, title III of the Outer Continental Shelf Lands Act Amendments, the Deepwater Ports Act, and the Trans-Alaska Pipeline Authorization Act, all play a role in oil spill liability and compensation. But they provide varying and uneven liability standards and scope of coverage for cleanup costs and damages associated with activities covered by each individual law. Moreover, this array of narrowly defined programs can create administrative problems as well. As a result, the goal of compensating those injured may be complicated by questions of jurisdiction of the various Federal agencies. For example, when an oil spill occurs it may be necessary to track down the source of the spill before the applicable statute is applied and compensation claims presented.

Finally, the 1851 Limitation of Liability Act represents a potentially devastating bar to effective recovery of either cleanup costs or damages. Perhaps that Act had merit 135 year ago, since its purpose was to further the interests of this country's budding merchant marine by encouraging shipbuilding and employment of ships. To that end, vessel owner liability was limited to "the amount or value of the interest of such owner in such vessel, and her freight pending." Current application of that law, however, has resulted in situations where the owner pays next to nothing because the vessel and cargo are a total loss following a catastrophic incident. In two Federal cases where the owner of a vessel has in-

voked the provisions of this Act, courts have held that this law, where applicable, has the effect of limiting recoveries under State law, including provisions allowing unlimited liability.

Section 311 of the Clean Water Act and the legal framework

The body of law already established under section 311 of the Clean Water Act is the foundation of the reported bill. Many of that section's concepts and provisions are adopted directly or by reference. This bill provides for liability and the availability of the fund to pay removal costs and compensation in the case of discharges of oil. As reported by the Committee, S. 2799 raises the limits of liability established under section 311 of the Clean Water Act and explicitly extends strict, joint, and several liability for compensation of third party damages.

Under section 311, as a result of the 1977 Clean Water Act Amendments, a vessel is liable up to $150 per gross ton (or $250,000 if that is more, where carrying oil or a hazardous substance as cargo); an inland oil barge is liable up to $125 per gross ton (or $125,000 if that is more), and a facility is liable up to $50 million. These amounts are only for removal costs, including restoration of natural resource damages.

The new limits of liability under the reported bill include both removal costs and compensation for damages. The limit of $500 per gross ton for tankers, for instance, may involve all damages, or all removal costs, or any combination thereof. The limits of liability provided by the reported bill in effect supercede the limits of section 311, and the distinction between inland oil barges and other oil-carrying vessels is eliminated.

Under the reported bill, removal costs will be satisfied and damaged parties will be compensated, regardless of the source of a spill of oil. Such removal costs and damages include damage to real or personal property, loss of natural resources or the use of such resources, loss of income, profits, or impairment of earning capacity, and loss of taxes, royalty, rental, or revenue by governments. In addition to paying removal and damage costs, money can be appropriated from the Fund to pay for research relating to spills, equipment, overhead, enforcement, and other administrative costs.

As under existing law, owners and operators of vessels and offshore facilities are required to establish and maintain evidence of financial responsibility sufficient to meet their liability under the act. No requirement for evidence of financial responsibility for onshore facilities is contained in the bill. S. 2799 as reported by this Committee explicitly preserves the rights of States to enact or implement liability compensation or other statutes affecting their own citizens or resources.

Oil spill compensation fund

The reported bill, S. 2799, establishes the Oil Spill Compensation Fund. One of the purposes of the Fund is to provide a source of money for immediate cleanup activities or damage compensation in the event a spiller does not act promptly. In such a case, the Fund would be used for removal costs and would be available for prompt damage compensation. The Fund would then be subrogated to all

rights against the spiller for all expenditures up to the extent the spiller is liable, given any limits or defenses to liability.

Another purpose of the Fund is to provide a source of compensation for claims which are not settled by the spiller by virtue of a limit or a defense. This assures compensation of victims regardless of the liability of the spiller. Increased liability limits and coverage of third party damages will help fix responsibility for cleanup and damages where it belongs—on the discharger. The Fund assures that the costs associated with a spill are compensated, not just those within the spiller's limit of liability, through a mechanism which spreads these excess costs to all users of oil.

A third purpose is to provide funds for compensation in the event the spiller cannot be identified or located, or is judgment proof. Even though the 1851 Federal Limitation of Liability Law is explicitly made inoperative by this bill for claims arising under this legislation or State law, there may be cases where the assets of the owner or operator are not sufficient to meet the liability. The Fund assures compensation in such cases, with the cost borne by all owners and users of oil.

Preemption

The issue of Federal preemption of State laws in one that often arises during the formulation of legislation which imposes Federal environmental controls. To date, Federal legislation has affirmed the rights of States to protect their own air, water, and land resources by permitting them to establish State standards which are more restrictive than Federal standards.

Historically, the Committee on Environment and Public Works and not the Congress have protected the rights of States to impose more restrictive requirements or liability, particularly in the area of oil pollution law. More stringent State laws are specifically preserved in both the Clean Water Act (for cleanup of spills of oil) and in the Deepwater Port Act and title III of the Outer Continental Shelf Lands Act Amendments of 1978 (for cleanup and damages caused by spills of oil). Other environmental statues, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (the toxic chemical "Superfund" law), contain similar protections.

In the course of the development of the liability and compensation fund legislation some interested parties aragued that preeemption of State law is an essential element of a comprehensive Federal regime. The proponents of preeemption arguedd that a proliferation of differing State laws affecting limits of liability, defenses to liability, financial responsibility requirements, fee collection, etc., would create an inconsistency leading to confusion and delay.

To date, many States have enacted comprehensive oil pollution laws covering cleanup and damages and many have established compensation funds. Some have included hazardous substances as well. This legislation, as reported by the Committee, would permit such State laws to continue and would not preclude enactment of new State laws.

The theory behind the Committee action is that the Federal statute is designed to provide basic protection for the environment and victims damaged by spills of oil. Any State wishing to impose a

greater degree of protection for its own resources and citizens is entitled to do so. On the other hand, a State might feel adequately protected by the Federal statute and therefore choose not to enact additional State law. In any event, the Committee chose not to impose, arbitrarily, the constraints of the Federal regime on the States while at the same time preempting their rights to their own laws.

Similarly, a State's authority to establish a compensation fund with the same, and possibly broader, purposes as the Federal and international funds are preserved. This goes beyond "grandfathering" existing funds, recognizing State authority to establish a compensation fund if it has not already done so. States have the clear authority to finance their compensation funds by taxing oil "landings" at a rate determined by the State, or by other means. The tax rate set under Federal law to finance the Federal compensation fund would not be a ceiling for, or otherwise limit, the rate that States set.

Twelve States have oil spill funds. All 12 are available for cleanup and abatement, while some are also available for third party damages, lost income and tax revenues, research and development, restoration of wildlife and natural resources, and associated administrative costs. These State funds have proven to be an effective means for responding to oil pollution.

Preemption of the State funds would compromise a State's ability to prevent or limit oil spill damage to the natural resources and property of its citizens. Unfortunately, situations have arisen in the past where Federal cleanup efforts have been inadequate. Preemption of State funds would make the States wholly dependent on the Federal funds and response system. The result might be a decrease in the degree of protection from oil spill damage, rather than an increase.

Of the 24 States with oil spill liability and compensation laws, 17 of them have liability without specified limits. This is based on two widely accepted principles: a polluter should pay in full for the costs of oil pollution caused by that polluter; and, a victim should be fully compensated.

It is sometimes argued that liability must be limited in order for the owner or operator to afford reasonably priced insurance coverage. Some arguments are so extreme as to suggest that tankship companies and offshore producers would not operate in an atmosphere of "unlimited" risk. But these claims are totally unfounded. Even in the 17 States without liability limits, oil shipping and producing companies are not refusing to do business. None of the testimony received by the Committee contained evidence that any shipper or producer has avoided these 17 States or has chosen to quit the business.

In order to assure a quick response to an oil spill, States will have immediate access to the domestic compensation fund to initiate expeditious cleanup and abatement. State officials, equipment, and personnel are usually located more closely than their Federal counterparts to ports, harbors, and the localities where oil spills are likely to occur. By granting direct draw authority to State officials of at least $250,000 without prior consent from Federal fund officials, as set forth in section 103(d) of the bill, the great majority

of spills, many of which are almost routine in nature, would not require any Federal involvement at all. Further, a direct draw system will grant time to access the full threat of the spill. If it appeared to be catastrophic in nature, the Federal response teams could be mobilized on a large scale while the State response teams were already at the scene taking preliminary abatement actions.

Because the State teams could handle the majority of the spills, Federal expenditures would be reduced, while allowing the well-established State oil spill response programs to continue.

The Committee considered many issues associated with this bill. Three days of hearings were held in addition to previous years' consideration of relevant amendments. The Committee recognizes that many years of effort preceded this action. The Committee on Environment and Public Works approved this bill by a unanimous vote of 15–0.

MAJOR PROVISIONS

Creation and uses of fund

The Oil Pollution Liability and Compensation Act of 1986 builds upon section 311 of the Clean Water Act to create a single Federal law providing cleanup authority, penalties, and liability for oil pollution.

The bill creates a single fund to pay for the removal of and damages from oil pollution.

As reported, S. 2799 contains no taxing provisions. However, other versions of this legislation would sustain the Fund through a tax on crude oil received by refineries or terminals. The fee would be collected on all offshore, domestic and imported oil until the fund reached a certain level, at which time the fee would be suspended. Authority would exist to borrow from the U.S. Treasury in order to cover claims in the event that the amount in the Fund were exceeded. Printed as an appendix to this report is an illustration of the type of amendment required to establish a new unitary oil fund through enactment of new authority and consolidation of existing programs.

This Fund would replace those funds created under the Trans-Alaska Pipeline Act, the Deepwater Port Act of 1974, and the Outer Continental Shelf Lands Act. The new Fund also would supersede the contingency fund under section 311 of the Clean Water Act, and the balance of that fund, along with the balance in the Deepwater Port and OCS funds, would be transferred to the new Fund.

Availability of the fund

The Fund would be available, up to a limit of $500 million per incident, for all removal costs and compensable damages. As reported, S. 2799 would establish a simplified claims procedure for the disbursement of compensation available from the Fund.

The Fund would be available for the following:

—Cleanup costs or damages which exceed the limits of liability of the discharge where the discharger cannot be identified or there is a delay by the spiller in satisfying the claim:

—All removal costs and expenses incurred by the Federal or State governments, or any other party, under the national contingency plan;
—The costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;
—The costs of Federal or State efforts in the restoration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;
—Payment of contributions to the International Fund as prescribed in section 305 of this Act;
—Subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams;
—The costs of a program to identify, investigate, and take enforcement and abatement action against discharges of oil, including the provisions of section 311(j)(1) (C) and (D) of the Clean Water Act;
—All administrative and personnel costs of administering the Fund and this Act.

The principal concept of this bill is to provide ready and complete compensation for any party suffering damages from discharges of oil or hazardous substances. Similarly, the Fund is to assure prompt access to sufficient sums to pay all removal costs and restoration of natural resource damages. The use of Fund moneys for removal by State or Federal agencies should not be treated as claims against the Fund, to be determined under a quasi-adversarial claims procedure, but simply and expeditiously made available. They are automatic draws against the Funds, similar to the direct draw authority.

In promulgating regulations establishing claims procedures under this legislation, the President shall observe the following principles: The Fund is to provide compensation for damage claims fully and promptly. While the Fund must require some evidence of loss and the establishment of a causal connection with oil pollution, it should not routinely contest or delay the settlement of damage claims. The Fund will sometimes be providing compensation where there is little chance of subrogation against the discharger. Even so, litigation or lengthy adjudicatory proceedings over liability, defenses, or the propriety of claims should be reserved for subrogation actions against dischargers.

The bill requires claims to be presented in the first instance to the discharger, where known. Wherever possible, the burden is to be on the discharger to first bear the costs of removal and provide compensation for any damages. The regulations must reflect this intention, providing strong incentive to the discharger to undertake removal operations at its own initiative to cooperate with Federal and State authorities, and to provide prompt compensation. Where the discharger has not satisfied a claim within the minimum time necessary for receiving and processing the claim, the

regulations are to provide the immediate availability of the Fund to satisfy the claim. The right of action against the discharger acquired by subrogation should then be vigorously pursued by the Fund.

Subsection (d) clarifies State access to the Federal fund and provides that the Governor of each State, or the Governor's designee, is authorized to obligate up to $250,000 in direct draw from the Fund without prior approval from the President. The only requirement that applies to the State's direct draw authority is notification to the President within 24 hours of the exercise of such authority.

In addition, this subsection clarifies that the President and the Governor of any interested State may enter into agreements providing for additional removal action or direct access for additional payments. Not later than six months after the date of enactment, the President shall publish proposed regulations further clarifying implementation of this provision. Such regulations are to be promulgated not later than three months after the close of the comment period. In the absence of regulations promulgated under this subsection, the States have direct draw authority; such regulations are not a prerequisite to the exercise of this authority.

Under S. 2799, removal costs and damages incurred in connection with previous oil spills, including, for example, those recently occurring in the Delaware River, such as the discharge on September 10, 1986, by the *Viking Osprey,* which remain uncompensated, could be covered.

APPENDIX A SAMPLE OIL SPILL FUND

S. 2799, the Oil Pollution Liability and Compensation Act of 1986, is amended by adding at the end thereof the following:

TITLE IV—OIL SPILL COMPENSATION FUND

REVENUE SOURCES

SEC. 401. (a) Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "0.79 cent" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) Section 4611 of the Internal Revenue Code of 1954 is amended by redesignating subsections (c) and (d) as subsections (d) and (e) respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Compensation Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate shall be that rate established in the

Superfund Amendments and Reauthorization Act of 1986, and

"(B) the Oil Spill Compensation Fund financing rate is 1.3 cents a barrel."

(c) Section 4612 of the Internal Revenue Code of 1954 (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Any taxpayer who has paid fees to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund shall be entitiled to a credit against the portion of the tax imposed by section 4611 which is attributable to the Oil Spill Compensation Fund financing rate. The amount of the credit for any period shall be equal to the total amount paid by the taxpayer to either or both of those funds less the total of all credits allowed under this subsection for all prior periods. The amount of the credit for any period shall not exceed the portion of the tax imposed under section 4611 for that period, which is attributable to the Oil Spill Compensation Fund financing rate."

(d) Subsection (e) of section 4611 of the Internal Revenue Code of 1954 (relating to application of taxes), as redesignated by subsection (b) of this section, is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall apply after the date established by the Superfund Amendments and Reauthorization Act of 1986.

"(2) OIL SPILL RATE.—The Oil Spill Compensation Fund financing rate under subsection (c) shall apply after January 1, 1986, and before the date, as determined by the Secretary of Treasury, upon which the assets of the Oil Spill Compensation Fund, less any outstanding obligations of that Fund, are equal to or greater than ————————.".

CREATION OF FUND

SEC. 402. (a) Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to the establishment of trust funds) is amended by adding the following new section:

"SEC. 9507. OIL SPILL COMPENSATION FUND

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Compensation Fund', consisting of such amounts as may be appropriated or credited to that trust fund as provided in this section or section 9602(b).

"(b) TRANSFER TO TRUST FUND.—There are hereby appropriated to the Oil Spill Compensation Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Compensation Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under the Oil Pollution Liability and Compensation Act of 1986,

"(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund, established under title III of the Outer Continental Shelf Lands Act Amendments of 1978,

"(5) amounts credited to the Oil Spill Compensation Fund pursuant to section 311(s) of the Clean Water Act, and

"(6) interest earned on any amounts on the Oil Spill Compensation Fund that the Secretary determines will not be needed for obligation during any period.

"(c) EXPENDITURES.—

"(1) EXPENDITURE PURPOSES.—Amounts in the Oil Spill Compensation Fund shall be available only for the purposes of making expenditures which are described and authorized in section 103(a) of the Oil Pollution Liability and Compensation Act of 1986, as in effect on the effective date of this section.

"(2) MINIMUM BALANCE.—Except in the case of payments described in paragraphs (1), (4)(A), (7), (9), and (10) of section 103(a) of the Oil Pollution Liability and Compensation Act of 1986, a payment may be made from the Oil Spill Compensation Fund only if the amount in the Oil Spill Compensation Fund after that payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Compensation Fund, as repayable advances, such sums as may be necesary to carry out the purposes of the Oil Spill Compensation Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum amount of repayable advances to the Oil Spill Compensation Fund which is outstanding at any one time shall not exceed $500,000,000.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made pursuant to this subsection shall be repaid, and interest on those advances shall be paid, to the general fund of the Treasury when the President determines that monies are available for those purposes in the Oil Spill Compensation Fund.

"(B) RATE OF INTEREST.—Interest on advances made pursuant to this subsection (i) shall be at a

rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield of outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding, and (ii) shall be compounded annually.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN OIL SPILL COMPENSATION FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Compensation Fund may be paid only out of the Oil Spill Compensation Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Oil Pollution Liability and Compensation Act of 1986 (or in any amendment made by that Act) shall authorize the payment by the United States Government of any amount with respect to any claim filed against the Oil Spill Compensation Fund out of any source other than the Oil Spill Compensation Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Compensation Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of the Oil Spill Compensation Fund at that time, the unpaid claims shall, to the extent permitted under subsection (c)(2), be paid in full in the order in which they were finally determined.".

(b) The table of contents for subchapter A of chapter 98 of the Internal Revenue Code of 1954 is amended by adding in the appropriate place the following new item: "Section 9507. Oil Spill Compensation Fund".

(c) The amendments made by this section shall take effect upon enactment of this Act.

Coverage and definitions

The Oil Pollution Liability and Compensation Act of 1986 continues to rely on section 311 of the Clean Water Act as the basic law providing for cleanup authority, for penalties for spills and failure to notify of spills, and, by adopting the standard of liability under section 311 as the standard of liability under this Act, for liability of dischargers for cleanup costs for the discharge of oil. That standard of liability has been determined repeatedly to be strict, joint, and several liability. This bill adopts that standards for economic damages, as well as for removal costs and natural resource damages.

The reported bill covers all the bodies of water and resources covered by section 311, including the inland waters of the United States and the living and non-living resources of the Outer Continental Shelf and of ocean waters out to 200 miles offshore. Coverage includes all discharges of petroleum oil into the environment, defined to include the navigable waters, the waters of the contiguous zone of the United States, the ocean waters of which the natu-

ral resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act, adjoining shorelines, and the ambient air above such waters and shorelines. Because of the definition of "natural resources" in the bill, discharges affecting all the living and nonliving resources of these areas, including the Outer Continental Shelf, are covered by the reported bill.

The definition of "discharge" in the reported bill does not contain the exclusion for routine or permitted release found in section 311. This bill, however, deals only with discharges or significant threats of discharge that require a response or that cause damages. The notification and penalty provisions of section 311 make a more limited definition of discharge appropriate in that context.

The reported bill also covers claims of foreign citizens arising from certain discharges into a territorial sea of a foreign country, such as Canada.

The bill defines "tankers" as vessels constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo. Higher liability limits then apply to tankers than apply to other vessels. When used in this definition or at other places in the reported bill, the phrase "in commercial quantities" refers to those quantities of oil carried aboard a vessel for purposes other than the operation of the vessel itself.

A major deficiency of title III of the Outer Continental Shelf Lands Act Amendments of 1978 is corrected by the reported bill. Under that title, the owner or operator of an OCS facility is held liable. Often, that owner or operator is an independent drilling contractor and not the actual holder of the rights to produce the oil. This technical feature of the 1978 Act changed the way in which OCS leaseholders and drilling contractors had historically allocated liability, through contracts and indemnity agreements. The reported bill restores the balance among leaseholders and drilling contractors on the OCS, leaving the possibility of further adjustment in their internal allocation of liability through indemnity agreements. The bill accomplishes this by defining "owner or operator" for OCS facilities to mean the lessee or permittee of the area in which the facility is located (or the holder of the OCS rights). Where a mobile offshore drilling unit is being used as an OCS facility, and there is a discharge of oil on or above the surface of the water, the owner or operator of the unit is liable, up to the limits established by the reported bill for tankers. If costs exceed that limit, the excess costs must be borne by the lessee or permittee. If a discharge of oil from a mobile offshore drilling unit occurs below the surface of the water, the lessee or permittee is liable.

Liability

The reported bill imposes liability as defined under section 311 of the Clean Water Act on the owner or operator of any vessel or onshore or offshore facility discharging oil. Liability covers all removal costs, whether incurred under section 311 of the Clean Water Act, the Intervention of the High Seas Act, and section 18 of the Deepwater Port Act of 1974 or other laws or programs. Owners and operators are liable for natural resources damage claims, discussed below.

The legislation also establishes in section 102(a) that owners or operators are liable for economic damages, including injury to, destruction of, or loss of any real or personal property; any loss of use of real or personal property; any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property; and any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision for not more than one year.

These provisions are intended to provide compensation for a wide range of injuries and are not so narrowly focused as to prevent victims of an oil spill from receiving reasonable compensation. For example, economic damages include both loss of use and loss of subsistence use of natural resources. Under this provision, fishermen, for example, would not only receive the equivalent of unemployment compensation, but would also receive compensation to prevent loss of a boat. Lost wages are of limited value if the means of earning the wages, such as a boat, go uncompensated. While setting a Federal liability standard and stating what damages are compensable, these provisions do not preclude States from adopting different standards or definitions of damages.

Defenses to liability are provided in section 102(b) in three limited circumstances: for an act of God, an act of war, or an act or omission of a third party (or any combination of these). The third party defense applies to one who is not an employee or agent of the defendant or one whose act or omission does not occur in connection with a contractual relationship with the defendant, if the defendant establishes that the defendant exercised due care and took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions.

This subsection provides for third party defenses only where the third party had not entered into a contractual relationship with the defendant. This is to preclude defendants from avoiding liability by claiming a third party was responsible, when that third party had a contractual relationship with the defendant and was acting, in essence, as an extension of the defendant. As provided in subsection (f), an owner or operator may not transfer liability for any discharge or threat of a discharge, but agreements to insure, hold harmless, or indemnify are not barred. As in all other provisions under the bill, States are free to provide different defenses with respect to liability under their laws.

The limits on liability established by the reported bill in section 102 are:

—$500 per gross ton or $10,000,000, whichever is greater, for tankers carrying oil in bulk or commercial quantities as cargo, including inland and coastal barges operating in navigable waters;

—$300 per gross ton or $500,000, whichever is greater, for any other vessel;

—the total of all removal costs, plus $75,000,000, for any Outer Continental Shelf facility;

—$100,000,000 for any deepwater port facility (including the liability of the licensee for a discharge from any vessel moored

at such port, in any case where $100,000,000 exceeds $500 per gross ton of such vessel);

—$100,000,000 for any other onshore or offshore facility.

The President is authorized to establish by regulation a maximum limit of liability for such other facilities that is less than $100,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility. For example, the President may consider establishing lower limits for facilities handling very small amounts of oil.

Owners or operators are liable under section 102 for prejudgment interest on removal costs and economic damages, and such prejudgment interest is not subject to the limitations on liability.

The limits on liability provided in section 102(c) are based on existing Federal law or limits contained in the Conventions currently pending before the Senate. Under the terms of section 106 and title III, such limits are not preemptive of State liability limits. In several of the existing Federal laws on oil spills, the liability limits have not been increased in 10 years so that, in real dollars, the liability limits have been decreasing over time. In order to prevent further diminution of compensation, section 102(c)(4)(B) requires the President to adjust the limits on liability by regulation not less often than every three years to take into account significant increases in the Consumer Price Index.

S. 2799 does continue to use current law in some instances. For example, currently the Outer Continental Shelf Lands Act requires responsible parties to pay for all removal costs, without limitation. S. 2799 affirms and continues this policy.

Liability is not limited if caused by willful misconduct or gross negligence within the privity or knowledge of the owner or operator, or by a gross or willful violation of applicable safety, construction, or operating standards or regulations. For vessels, these must be federally promulgated standards. Such standards or regulations should not be trivial requirements that are unrelated to the discharge. Failure to notify appropriate officials of a discharge and failure or refusal to cooperate in cleanup activities also invalidates the liability limits.

A limit on liability is clearly of benefit to an owner or operator subject to the provisions of this legislation. Such a benefit should not be conferred, however, in instances where the conduct of the owner or operator indicates that such owner or operator is not, in good faith, attempting to comply with the applicable regulations or statutory requirements. In these instances, where compliance perhaps could have prevented or mitigated the effects of an oilspill, no such limits should apply.

Liability may not be transferred, but nothing in section 102(f) bars any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section. Nothing in the reported bill bars a cause of action that an owner or operator subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

The owner or operator of a vessel shall be liable in accordance with this section, the International Convention on Civil Liability

for Oil Pollution Damage, 1984, and section 311 of the Clean Water Act, under maritime tort law, and as provided in section 106 of the reported bill, notwithstanding any provision of the Act of March 3, 1851, or the absence of any physical damage to the proprietary interest of the claimant. The 1851 statute limits liability of owners or operators to the value of the vessel and the cargo after an incident has occurred. In today's liability scheme, this approach appears dated and inconsistent with Congress' repeated statements on the appropriate liability of parties. If applied to these circumstances, the 1851 statute virtually eliminates any meaningful liability on the part of the owner or operator and would unravel the balance of liability set forth herein. Therefore this bill completely supersedes the 1851 statute with respect to oil pollution.

Natural resource damages

Under section 102(a) of the reported bill, an owner or operator is liable for any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, and for any loss of use (including loss of subsistence use) of any natural resources, without regard to the ownership or management of such resources. Section 102(d) provides that for injury to natural resources covered by section 102(a)(2)(C), liability shall be to a trustee, acting on behalf of the public. The President designates Federal officials to act as trustees for natural resources belonging to or managed by the United States, to assess damages and seek recovery. The Governor may designate State officials to act as trustees for natural resources under State trusteeship.

The reported bill requires the President, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with other agencies, to promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil, for use under this Act. The reported bill makes clear that damages include the costs of restoration, replacement, or acquisition of equivalent resources, plus any additional lost use value or other damages beyond such restoration costs. This necessitates the use of nonmarket assessment methodologies. The measure of damages is not limited by the amount which can be used to restore the damaged resources, but any sums collected by any Federal or State trustee can only be used for natural resource improvement purposes.

A Federal trustee is authorized to retain any recovered sums and use them for these purposes wihtout further appropriation. Any assessment of damages conducted in accordance with the regulations promulgated under this Act has the force and effect of a rebuttable presumption on behalf of the State or Federal trustee in any judicial or administrative proceeding under this Act. Assessments, of course, must be conducted by trustees, not by responsible parties.

Financial responsibility

Under section 104 the owner or operator of any vessel over 300 gross tons using any waters or ports of the United States or any outer continental shelf facility or deepwater port facility must maintain evidence of financial responsibility sufficient to meet the amount of potential liability established in section 102. Non-self-

propelled barges that do not carry oil as cargo or fuel are exempt from the requirement. A vessel that cannot produce the required evidence can be denied entry to, or detained at, United States ports or facilities, and its cargo can be seized.

The owner or operator of any offshore facility must also establish and maintain evidence of financial responsibility sufficient to meet the liability requirements of section 102. There is no requirement for showing evidence of financial responsibility for onshore facilities.

Evidence of financial responsibility is to be established according to regulations prescribed by the President and may include insurance, surety bonds, guarantees, letters of credit, qualification as a self-insurer, or other evidence.

Claims for costs and damages may be asserted directly against any guarantor who provides evidence of responsibility for an owner or operator who is liable under the act for such costs and damages. The guarantor may invoke all rights and defenses available to the owner or operator and also the defense that the discharge was caused by the willful misconduct of the owner or operator. Liability of the guarantor is limited to the monetary limits in the instrument establishing financial responsibility.

The President is authorized to assess a civil penalty of up to $25,000 per day of violation against anyone who fails to comply with financial responsibility requirements or denial of entry or detention orders. Judicial actions for relief are also authorized.

Regulations respecting financial responsibility in effect at the time of enactment of the act remain in effect until superseded by new regulations.

Litigation, jurisdiction, and venue

Section 105 provides that review of any regulation promulgated under the Act is available only in the United States Circuit Court of Appeals for the District of Columbia and must be sought within 90 days of promulgation. Any matter which is subject to review under this provision is not subject to review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

Appropriate United States district courts are given jurisdiction over controversies arising under the Act, and actions that arise under the International Conventions on Civil Liability for Oil Pollution Damage and on the Establishment of an International Fund for Compensation for Oil Pollution Damage, should those conventions be ratified and come into force, are deemed to be actions under the Act.

Appropriate State courts are given jurisdiction over claims made under section 102, and final judgments of such courts are valid and enforceable for all purposes of sections 102 and 103 and for title III.

The bill establishes time limitations for bringing actions to seek compensation for damages or to recover removal costs. An action for damages must be commenced within three years after the later of (1) the date of discovery of the loss and its connection with the discharge or, (2) with respect to the loss of use of natural resources, the date regulations for the assessment of damages are promulgated under section 102(d)(3).

Actions for the recovery of removal costs must be commenced within three years after the completion of the removal action. In a removal action, the court is required to enter a declaratory judgment on liability that will be binding on any subsequent action involving the same parties. An action to recover removal costs may be brought at any time after costs have been incurred.

Actions for contribution for removal costs or damages must be commenced within three years of judgment or settlement, and actions based on rights subrogated by reason of payment of a claim must be begun within three years of payment of the claim.

The rights of minors and other incompetents are preserved until such time as they become legally competent or a guardian ad litum is appointed.

State laws and programs

Section 106 of the reported bill explicitly preserves the authority of any State to impose its own requirements or standards with respect to discharges of oil within such State. Also explicitly preserved is State's authority to establish or maintain funds for clean-up or compensation purposes and collect such fees or penalties as they may establish.

The Committee has confronted the preemption during its previous consideration of oilspill legislation. A new factor in the preemption debate is the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil pollution Damage, 1984, which are pending before the Senate Foreign Relations Committee. The conventions, if ratified and implemented by the United States without appropriate reservations or understandings, might preempt liability limits established under State or Federal law. For this reason, Title III of the bill, discussed below, implements the Conventions only to the extent they do not preempt Federal or State law. Separate formal ratification of the Conventions would, of course, also be necessary before the Conventions went into effect.

The possible preemptive effect is a key feature of oil spill legislation and has been discussed more than any other single issue. S. 2799 does not embrace any preemption of State oil spill liability laws, State oil spill funds, or State fees, taxes, or penalties used to contribute to such funds. The long-standing policy in environmental laws of not preempting State authority and recognizing the rights of States to determine for themselves the best way in which to protect their citizens, is clearly affirmed in S. 2799.

Section 106 (c) authorizes States to enforce the Federal financial responsibility requirements established under section 104 of this Act, in or on their own navigable waters. Such enforcement would include inspecting vessels and facilities, requiring the display of the evidence of financial responsibility required under section 104, and imposing fines and penalties and other sanctions for failure to comply with the requirements of section 104. Section 106(c) does not expand the scope of the section 104 requirements themselves.

The President is required under subsection (d) to consult with the affected State or States on the appropriate removal action to be taken. Removal with respect to any discharge or incident shall be

considered completed when so determined by the President and the Governor or Governors of the affected State or States. This subsection clarifies the appropriate relationship between the Federal Government and the States in determining when removal is complete. There has been a relatively good record of cooperation and agreement between the States and the Coast Guard in carrying out response authorities under existing laws. Since States, as well as the Federal Government, are under an obligation to protect the environment and the health of their citizens, however, this bill requires that both the States and the Federal Government agree when removal has provided such protection.

Subsection (e) clarifies that nothing in this Act, the Act of March 3, 1851, or the provisions of the Internal Revenue Code of 1954 establishing the Oil Spill Compensation Fund, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision to impose additional liability or additional requirements, or to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law, relating to the discharge, or substantial threat of a discharge of oil. This subsection reinforces the position stated clearly elsewhere that no aspect of State oil spill programs is preempted, including the authority to impose additional requirements or penalties. In addition, it clarifies that the 1851 statute does not limit liability under State or Federal oil spill laws.

Study of spill prevention in restricted waters

Section 107 of the reported bill requires the President to conduct a study, and report the results to Congress not later than one year after enactment of the Act, on improved methods for preventing oil discharges in restricted waters and similar portions of bays, estuaries, and near shore waters. In conducting this study, the President is required to examine the causes of recent major discharges of oil from vessels in the Delaware River, including those by the *Grand Eagel* in September 1985, by the *Intemar Alliance* in March 1986, and by the *Viking Osprey* in September 1986. In conducting such a study, the President is required to consider modifications in tanker construction and operation standards, crew training and locale familiarization, improvement in navigation aids, and other approached with the potential for reducing the likelihood for such discharges of oil. Such other approaches which shall be considered include examining means to improve vessel maneuverability. In examining the vessel maneuverability questions, the President shall consider human factors relating to maneuvering, the development of maneuvering standards, vessel manuevering instrumentation, the enforcement of vessel maneuvering standards, the development of a vessel maneuvering data base, and other appropriate factors.

Under section 103(a)(9), the President shall use money from the Fund for the costs of this study.

Conforming amendments to existing oil spill laws

Title II of the reported bill conforms the provisions of various other laws to the provision of this Act.

Section 201 makes clarifying amendments to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653). The amendments in

this Act make it clear that the removal liability of the permit holder extends only to activities relating directly to the Trans-Alaska Pipeline. Additional language makes the Trans-Alaska Pipeline Authorization Act removal liability provisions inapplicable in those situations where this Act applies. In all other instances, those provisions in the Trans-Alaska Pipeline Authorization Act relating to removal costs and liability remain in effect.

The reported bill also repeals that subsection of the Trans-Alaska Pipeline Authorization Act which established a compensation fund for damages caused by oil spills from vessels transporting oil from the pipeline terminus to ports elsewhere in the United States, effective upon the payment of any outstanding claims. Further, this section provides for a rebate of the remaining balance in the Trans-Alaska Pipeline Liability Fund (TAPLF) to the original contributors. Section 201(d) provides that trustees of the TAPLF appointed by the Secretary of the Interior will not be held presently liable for any Fund activities, except for gross negligence or willful misconduct.

Secton 202 amends the Intervention on the High Seas Act, in order to make available to the Secretary, for intervention procedures authorized by that Act, the Fund established by this Act.

Section 311 of the Clean Water Act, is amended in several ways. Subsection (c) of that section is amended by authorizing reimbursement to States from the Fund established by this Act, for reasonable costs in removing discharges of oil pursuant to the National Contingency Plan. Subsections (d), (i) and (l) are amended to delete clauses made unnecessary by this Act.

The revolving fund under subsection (k) is repealed, and the amount remaining in the fund is transferred to the Fund established under this Act. Any amounts received by the United States with respect to claims brought under section 311 after the effective date of the repeal of subsection (k) shall also be deposited in such Fund.

Subsection (p) is repealed because it sets out financial responsibility requirements for vessels that are superseded by this Act.

A new subsection (s) is added to provide that the Oil Spill Compensation Fund established in this Act shall be available to carry out the provisions of subsections (c), (d), (i), and (l) as those subsections apply to discharges of oil.

It is important to note that following enactment of this Act, liability and compensation for petroleum oil pollution damages caused by a discharge from a vessel or facility will be determined in accordance with this Act. Liability and compensation procedures for spills of non-petroleum oil will continue to be determined in accordance with the Clean Water Act. The response authorities for all types of oil continue to be those under section 311. The Fund established by this Act will be available to Coast Guard and other government agencies for immediate response to spills of all types of oil from all sources in the same manner as the fund established by section 311(k) is presently available to respond to such spills.

Section 204 amends the Deepwater Port Act of 1974 by repealing various subsections pertaining to oil pollution liability and compensation which are superseded by this bill. This section also provides that amounts remaining in the Deepwater Port Liability Fund

shall be deposited in the Fund established in this Act. The Fund will assume all liabilities of the Deepwater Port Liability Fund.

Section 205 makes similar provisions for the assets and liabilities of the Offshore Oil Pollution Compensation Fund established under the Outer Continental Shelf Lands Act Amendments of 1978. Title III of that law (Public Law 95-372), which established the Offshore Oil Pollution Compensation Fund, is repealed in its entirety.

Notice of spill to State; increased penalties for failure to give notice

Notice.—Section 206 of the reported bill broadens current requirements under section 311 of the Clean Water Act for immediate notification of the appropriate Federal agency in the event of a discharge of oil or hazardous substance. The section requires that the appropriate State agency be notified in addition to the Federal agency. Ordinarily, this would be the State environmental agency, or the agency identified by the Governor.

Increased Penalties.—The section also increases the current penalties under section 311 for failure to report a spill immediately. Persons convicted of failing to provide immediate notification shall be fined in accordance with applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five in the case of a second or subsequent conviction), or both. Thus, this section classifies failure to notify as a felony, and a court could impose monetary penalties of up to $250,000. The sections of title 18 which are relevant to this section are currently section 3623 or, when applicable, section 3571. This is the format for criminal penalties for failure to provide notice adopted in the Superfund reauthorization conference report.

International conventions

Currently pending before the Senate are two Protocols to amend previous Conventions respecting oil pollution. The Protocols are The Protocol of 1984 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC Protocol), and The Protocol of 1984 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FC Protocol). The United States is a signatory to both of the underlying Conventions, but it is not a Party to either one. The United States declined to ratify the Conventions due to concerns about inappropriately low liability limits and fund size contained in the Conventions. The Conventions are currently in force internationally.

The Conventions establish an international system of liability for owners of tankers. These limits, even though increased under the Protocols, are not high enough to provide adequate compensation in the event of a major spill. An International Fund is also established to provide the additional compensation. The Conventions permit compensation for damage up to a specified limit, regardless of the size of the tanker whose spill caused the damage. Both the liability and conpensation limits are valued in International Monetary Fund Special Drawing Rights (SDRs).

Title III provides for implementation of the International Conventions (as amended by the Protocols), if, under section 302, the President determines the Conventions are consistent with specified

sections of the bill. Section 301 sets forth several definitions of terms used in this title.

Section 302 clarifies the applicability of the Conventions by requiring the President to determine the Conventions are consistent with sections 102, 103, and 106 before the liability provisions of the Conventions substitute for the regime under this Act. In making such a determination, the President would be exercising the authority of this bill, not acting in the capacity of chief of the Executive Branch. Such a determination is, therefore, subject to judicial review. In particular, this would require that the international regime be compatible with Federal liability limits and the preservation of State liability laws. In addition, section 302 states that ratification is clearly not provided in this bill. Separate action by the Senate to advise and consent to the Protocols is necessary for the United States to become a Party.

The issue of preemption must be considered in the context not only of any Federal scheme, but also of any international scheme for oil spill compensation. It is essential that Federal oil spill legislation not be preemptive, but such legislation sacrifices its non-preemption policy if the Conventions are ratified and implemented as currently drafted and without any reservations by the United States.

Section 303 recognizes the International Fund as a legal person under the laws of the United States. This section, like the remainder of this title, will be effective only when both the 1984 Conventions are implemented, ratified, and in force with respect to the United States. The Director of the International Fund is the legal representative of the International Fund. The Director is deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation in the United States.

Section 304 requires that in any action brought in a United States court against the owner of a ship or its guarantor under the Civil Liability Convention, a copy of the complaint shall be served on the International Fund at the same time the complaint or other pleading is served on opposing parties. The section also provides that the International Fund may intervene as a matter of right in any action brought in a United States court against the owner of a ship or its guarantor under the Civil Liability Convention.

Section 305 provides that the United States shall be responsible for the amount of initial and annual contributions required by the International Fund Convention, and that this payment shall be made on behalf of the United States by the Fund established by this Act. Additionally, subsection (b) authorizes the President to require persons required to make contributions to provide all information relating to the oil as may be necessary for the Fund to make appropriate contributions.

Section 306 requires United States courts to recognize decisions made under one of the International Conventions by a court of any nation which is a party to that Convention. Section 307 sets out the financial responsibility requirements needed to implement the Civil Liability Convention and provides sanctions for failure to ob-

serve those requirements. The section additionally provides for the waiver of U.S. rights to sovereign immunity with respect to any controversy arising under the Civil Liability Convention and relating to a ship owned by the United States and used for commercial purposes.

RELATIONSHIP TO UNDERGROUND TANKS PROGRAM

S. 2799, as reported, includes provisions establishing liability for onshore facilities for oil spills. The Senate also has before it legislation, S. 2850, which establishes a cleanup program and liability for underground storage tanks (for releases of petroleum and for releases of petroleum from underground storage tanks.) The provisions of S. 2840 are the same as the provisions agreed to by the Conferees on H.R. 2005.

Onshore facilities as defined in S. 2799 would include underground storage tanks as defined in S. 2840. It is the purpose of this discussion to clarify the relationship between the onshore facility and underground storage tank provisions of the two bills and to outline the areas where they differ.

The standard of liability for onshore facilities under S. 2799 is to be the same as the standard of liability under section 311 of the Clean Water Act which has been construed to be strict, joint, and several liability. Precisely the same standard of liability would apply to underground storage tanks under S. 2840 or H.R. 2005 as reported by the Committee of Conference.

Onshore facilities are subject to liability for a discharge of oil under S. 2799 which enters or threatens to enter the environment which is defined to include navigable waters, waters of the coastal zone, ocean waters, and other surface waters. Liability for releases from underground storage tanks under S. 2840 and H.R. 2005 extends to all releases to soil, surface water, or ground water. The tank provisions thus include, but are not restricted to, releases which enter or threaten to enter surface waters.

The owner or operator of an underground storage tank which releases petroleum to surface water (or which threatens to reach surface waters) could be held liable for the costs of damages or injury under the provisions of either S. 2799 or S. 2840 and H.R. 2005 as reported by the Committee of Conference. Although liability may be imposed under either or both provisions, no person coud recover costs or damages more than once from an owner or operator for the same injury.

The costs and damages for which an owner or operator of an onshore facility is liable under S. 2799 are listed in section 102 of the bill and are more numerous than the costs and damages listed in the underground storage tank provisions. Tank owners and operators are liable under S. 2840 and H.R. 2005 as reported by the Conferees for the costs of cleanup, alternative water supplies, relocation and exposure assessments. Tank owners and operators may be found liable for other costs or damages under the other applicable laws, including S. 2799 if enacted.

Although there is no liability for bodily injury caused by spills from onshore facilities under S. 2799, the owners and operators of underground storage tanks will be required under the provisions of

S. 2840 and H.R. 2005, as reported by the Committee of Conference, to maintain pollution liability insurance or other evidence of financial responsibility for property damage and bodily injury sufficient to protect human health and the environment. Although there is no mandatory requirement for financial responsibility for onshore facilities in the provisions of S. 2799, section 106 of that legislation explicitly preserves the requirements of other law which might apply to the owners and operators of onshore facilities, including the financial responsibility requirements of S. 2840 or H.R. 2005, as reported by the Committee of Conference, which are imposed on the owners or operators of underground storage tanks.

The provisions of S. 2799 limit the liability of the owner or operator of an onshore facility to $100 million. There is no comparable limit on the liability of owners and operators of underground storage tanks in the provisions of S. 2840 or HR. 2005, as reported by the Committee of Conference. If the owner or operator of an underground storage tank is found to be liable for costs or damages resulting from a release under the provisions of S. 2840 or H.R. 2005, as reported by the Committee of Conference, nothing in S. 2799 shall be construed to limit the amount of that liability. S. 2799 authorizes the President to lower the liability limits of onshore facilities below $100 million in certain instances, but nothing in S. 2799 authorizes the President to limit the liability of tank owners and operators under the provisions of S. 2840 or H.R. 2005, as reported by the Conference.

If the United States Government responds to a spill from an onshore facility under the provisions of S. 2799, the President shall seek to recover the full cost of the response up to the limit of liability of $100 million from the owner or operator or the guarantor. The Administrator of the Environmental Protection Agency which administers the response program for underground storage tanks established by S. 2840 and H.R. 2005, as reported by the Conference, may, considering the equities of each particular case, forego full cost recovery for response to some releases.

Nothing in the provisions of S. 2799 or S. 2840 or H.R. 2005 as reported by the Conference requires the Government to state in advance which authorities it is using to respond or the liability provisions which would be relied upon in a specific cost recovery action. Response authorities and cost recovery actions under the separate provisions should be coordinated according to the provisions of the National Contingency Plan.

HEARINGS

The Committee held three days of hearings on April 29 and September 10 and 12, 1986. Testimony was received from the Secretary of Transportation and representatives of State governments, industry, and environmental organizations.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes be noted in this report. S. 2799 was ordered reported by a unanimous rollcall vote 15–0.

EVALUATION OF REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires the committee to evaluate the regulatory impact of the reported bill.

It is not anticipated that this bill will impose any significant new regulatory burden.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2799, the Comprehensive Oil Pollution Liability and Compensation Act.

If you wish further details on this estimate, we will pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2799.

2. Bill title: Comprehensive Oil Pollution Liability and Compensation Act.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 16, 1986.

4. Bill purpose: S. 2799 would consolidate federal oil pollution response activities into one entity, the Oil Spill Compensation Fund (OSCF), which would provide for the cleanup and compensation of economic loss from oil spills that occur in navigable waters of the United States. Monies in the OSCF would also be available for administrative expenses and, subject to appropriations, for the cost of maintaining federal emergency response capability. Annual contributions to the International Fund (should the International Fund Convention be ratified by the United States) would also be paid from the OSCF.

Under Title II of the bill, the four existing oil pollution funds and compensation programs that now govern portions of the industry would be terminated. Unobligated balances in the U.S. Coast Guard's Pollution Fund, which now finances federal removal actions and natural resource restoration in U.S. waters or shorelines, would be credited to the OSCF upon enactment. Also transferred to the new entity would be unobligated balances of the Deepwater Port Liability and Offshore Oil Compensation funds. Unobligated

balances in the Trans-Alaska Pipeline Liability Fund, a nonprofit, nonfederal entity, would be rebated to the original contributors.

5. Estimated cost to the Federal Government: S. 2799 would not create the OSCF; rather, it would only specify the purposes for which the fund could be used. Moreover, the bill would only repeal existing oil pollution funds and their associated taxes. No new taxing mechanism is addressed. For these reasons, as well as the likelihood that cleanup and administrative costs of the new fund will be very similar to those of the old funds, the budgetary impact of the bill is limited to: (1) a $6 million revenue reduction in 1987 from the repeal of the Offshore Oil Compensation Fund, and (2) an increase in outlays for costs associated with fund creation, rule promulgation, and the study of spill prevention. These effects are shown in the following table.

[By fiscal years in millions of dollars]

	1987	1988	1989	1990	1991
Estimated Revenue Effects:					
From repeal of OCS tax	−6.0				
Less income tax offset	1.5				
Net revenue effect	−4.5				
Estimated budget authority	3.5	0.5	0.1	0.1	
Estimated outlays	2.9	.8	.4	.1	
Net increase or decrease (−)	6.8	.8	.4	.1	

Unlike the existing Pollution Fund, the OSCF will pay claims for losses when responsible parties cannot be located or do not pay, or when claims exceed liability limitations. Outlays for this type of expenditure are difficult to estimate: a spill costing only minor amounts to clean may generate millions of dollars in damage claims. For example, the Alvenus spill off the Louisiana coast in 1984 cost the spiller less than $5 million in cleanup costs, yet generated damage claims of $100 million. No estimate of payments for claims is included in the cost estimate table.

The cost of this bill fall within budget function 300.

Basis of estimate: Based on information provided by the U.S. Coast Guard, CBO estimates that the OSCF's beginning balance after transfers from existing funds will be approximately $110 million, assuming transfer takes place upon enactment. These transfers will have no net impact on the federal budget.

Revenue effects: S. 2799 would repeal the current tax on Outer continental Shelf oil production, estimated to produce gross revenues of about $6 million in fiscal year 1987 (after which time the fund is expected reach its maximum level and the tax would cease). The net revenue loss from repealing this tax is partially offset by resulting income tax changes, assuming constant GNP levels. This estimate is based on the assumption that the repeal of the OCS tax occurs upon enactment, which is assumed to be the beginning of fiscal year 1987. If repeal is delayed significantly, the loss of tax revenues may be much less.

Spending effects: The estimated budget authority and outlays shown in the table represent amounts that would need to be spent

by federal agencies for activities such as rule promulgation, spill prevention research, and fund startup. These costs, which are assumed to be paid out of the fund under Section 103(a)(10), have been estimated on the basis of information obtained from the National Oceanic and Atmospheric Administration and the U.S. Coast Guard.

The table does not include any estimate for other categories of spending from the fund, because these either approximate current expenses of existing oil pollution programs or are too uncertain to be estimated. For example, the costs of both administrative activities and emergency response capability are expected to be very similar to existing programs now funded through annual appropriations to various federal agencies. Therefore, OSCF costs associated with such activities are not expectred to have any incremental impact on the budget.

Cleanup costs under the new bill are also expected to be similar to those now incurred by the Coast Guard's pollution fund. (To date, no damage or cleanup costs have been charged to the Deepwater Port or Offshore Oil Compensation funds.) Such costs are impossible to estimate with precision, because significant oil spills are rare and unpredictable. While thousands of spills from vessels may occur in any year, most are quickly cleaned up by the responsible parties, and most are so small that their total costs, including claims, would not be high enough to trigger the bill's specified liability limitations.

Typically, the Coast Guard recovers about one-half of the amounts it spends on cleanup from its Pollution Fund. If recent experience continues for all types of spills (that is, no major facilities spills and between one and four major vessel spills a year), it is likely that no more than $5 million (at fiscal year 1986 price levels) would be spent from the OSCF on cleanup activities each year, about one-half of which would be reimbursed by responsible parties. Since such outlays and reimbursements would occur under current law from the Pollution Fund, they represent no net increase in federal spending.

Finally, S. 2799 would provide that the bill's damage and liability provisions would not apply during any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States. The bill would further provide that, if and when these conventions are ratified by the United States, annual contributions to the International Fund due from U.S. interests would be paid from the OSCF. Coast Guard analysis of various international scenarios indicates an expected U.S. annual contribution of about $8 million if the International Convention is ratified by 1990. OSCF administrative expenses of about $0.5 million a year would continue to be incurred, but expected cleanup costs could be partially offset by the contribution if some of these expenses are then reimbursed from the International Fund.

6. Spending mechanisms: Section 103 would create direct spending authority by directing the President to use money in the OSCF for certain specified uses. In the absence of any new tax, the cre-

ation of new budget authority would be limited to the transfers of $66 million in previously unappropriated collections that had been credited to the Deepwater Port and Offshore Oil Compensation funds. (Amounts credited to these funds originally were subject to appropriation; however, all sums in the permanent Pollution Fund were already appropriated, and use of these funds would not entail creation of new budget authority.) The budget authority in the cost estimate table reflects only net amounts expected to be spent.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Deb Reis and Neil Fisher.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirement of section 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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